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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Lassen)

THE PEOPLE,

Plaintiff and Respondent,

v.

DENNIS BRAMWELL CRESTA,

Defendant and Appellant.

C041211

(Super. Ct. No. CR016952)

Defendant Dennis Bramwell Cresta was convicted of cultivating marijuana and possessing a concealed dirk or dagger. In bifurcated proceedings, the court found defendant had 10 prior convictions within the meaning of the three strikes law. He was sentenced to two terms of 25 years to life, to be served concurrently. His sole contention on appeal is that this sentence constitutes cruel and unusual punishment. We shall affirm.

RELEVANT FACTS AND PROCEDURAL HISTORY

Pursuant to a warrant, Lassen County Deputy Sheriffs conducted a search of defendant's apartment. The deputies found

27 marijuana plants, a grow light, a book on marijuana hydroponics and hydroponic plant food. Upon searching defendant, deputies found two knives in his boot, one with a four-inch blade. Defendant admitted the marijuana was his and claimed he used it for medical reasons, although he did not have a medical recommendation.

In 1986, defendant "attempted 'suicide by cop.'" Specifically, "He went out with a AR-15 and a Ruger Mini 14 and 69 rounds of ammunition and shot up police units and at officers." As a result, defendant was convicted of five counts of attempted murder and five counts of assault with a firearm.

Prior to sentencing, defense counsel made a *Romero*¹ motion, asking the court to strike the prior strikes, as the current offenses were "neither violent [n]or involved victims." The court denied this motion. Defendant did not contend the sentence constituted cruel and unusual punishment.

DISCUSSION

Defendant now contends his sentence of 25 years to life is cruel and unusual punishment under both the federal and state Constitutions.

Defendant's failure to object to his sentence on federal constitutional grounds in the trial court waives the issue. (*People v. Burgener* (2003) 29 Cal.4th 833, 886.) As to the claimed violation of the California Constitution, a punishment

¹ *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

may violate California's Constitution if it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity. (*In re Lynch* (1972) 8 Cal.3d 410, 424.) In administering this rule, courts examine the nature of the offense and the offender, compare the punishment with the penalty for more serious crimes in the same jurisdiction, and compare the punishment to the penalty for the same offense in different jurisdictions. (*Id.* at pp. 425-427.) Thus, to successfully make such a claim, a defendant must make a specific factual showing in the trial court under one or more of three "techniques" identified above. Failure to do so renders the issue waived on appeal. (*People v. Kelley* (1997) 52 Cal.App.4th 568, 583; *People v. DeJesus* (1995) 38 Cal.App.4th 1, 27.) This defendant made no such showing in the trial court, nor did he raise a claim of cruel and unusual punishment at all. Therefore, the issue is waived.

DISPOSITION

The judgment is affirmed.

ROBIE, J.

We concur:

SCOTLAND, P.J.

DAVIS, J.